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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12484 of 2015
Date of decision:21.09.2015

Manju and another ...Petitioners

Versus

Union of India and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Puneet Sharma, Advocate,
for the petitioners.

Mr. Vikrant Pamboo, Advocate,
for respondent No.1.

Mr. Aman Chaudhary, Advocate,
for respondents No.2 to 5.

Mr. Aditya Sharda, Advocate,
for respondent No.6.

Mr. R. Kartikeya, Advocate,
for respondent No.7.

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Rakesh Kumar Jain, J.

The Employees' State Insurance Corporation (hereinafter referred to as the "ESIC"), a statutory body established by the Employees' State Insurance Act, 1948 (hereinafter referred to as the "Act") under the administrative control of Ministry of Labour & Employment, Government of India, started Medical Education Institutions in the country. The Central

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Government approved the admission policy and procedure for Under Graduate (MBBS/BDS) courses in the ESIC Medical Education Institutions, wherein ESIC Management Quota is provided after allocation to All India Quota and State Government Quota.

The applications were invited from the Wards of Insured Persons under the ESI Scheme who have qualified the All India Pre-Medical/Pre-Dental Entrance Test, 2015 (AIPMT-2015) for admission to the UG course (MBBS) in ESIC Medical Colleges under ESIC Management Quota for the academic session 2015-16 as per the admission policy and procedure approved by the Government of India/ESIC. The institution-wise details of seats provisionally to be allotted under ESIC Management Quota are as under:-

Sl. No.	***Name of ESI Medical College***	***Total No. of Seats***	***UR***	***SC @ 15%***	***ST @ 7.5%***	***OBC @ 27%***	***PH***
1	Joka-Kolkata, West Bengal	52	26	8	4	14	3%*
2	Rajaji Nagar, Bangalore, Karnataka	45	24	07**	3	12	
3	Gulbarga, Karnataka	45	23	06**	3	12	
4	K.K.Nagar, Chennai, Tamil Nadu	20	10	3	01**	6	
	Total	**162**	**83**	**24**	**11**	**44**	

* 3% seats are reserved for P.H. Category with `Horizontal Reservation' across all categories.

** Rounding off to match the model roster of reservation on All India basis by open competition.

The final number of seats to be allotted may be different from the provisional number of seats given above and would be subject to grant of permission to admit fresh batch of students by the Central Government in r/o the above mentioned ESIC Medical Colleges."

The seats available in the ESIC Management Quota in various

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States is to be pooled on All India Basis and allotted amongst the wards of Insured Persons. The candidates claiming ESIC Management Quota seats were required to produce "Ward of Insured Person Certificate", issued by the concerned Regional Director/SRO I/C. The insured person is also defined as under:-

> "**8.** **Insured person** for the purpose of availing benefit of ESIC Management Quota for his/her wards shall be, as under
>
> "The `Insured Person' shall be an `employee' as defined in the ESI Act; and he/she should have been in continuous insurable employment for a minimum period of five years as on 1st January of the year of admission and should have paid at least 78 days of contribution in each Contribution Period, during this five year period. The 5 year period would be counted from the date of entry into the ESI Scheme. For employees who entered the Scheme prior to 9th June, 2011, the date of entry into the Scheme for the purpose of availing benefit of ESIC management quota for his/her wards would be the date of submission of `Declaration Form' by the employer in respect of the employee concerned at the Branch Office or another appropriate office of the ESIC. For employees who entered the Scheme after 9th June, 2011, the date of entry into the Scheme for the above purpose would be the date of registration available in the IP database of the ESIC. In case there is default or delay on the part of the employer in getting itself or the concerned employee covered under the Scheme, the ESIC will not be responsible for the said default or delay. Any period prior to the date of entry described above would not be counted towards the 05 year period of eligibility for the purpose of availing benefit of ESIC Management Quota."

It is also provided that the Ward of Insured Person will be a legitimate natural born child who is wholly dependent on the earnings of the insured persons and who is (i) receiving education, till he or she attains the age of twenty-one years, and (ii) or an unmarried legitimate natural born

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daughter. It is further provided that the Regional Director/Other Officer/Authority/Committee under ESIC, as may be specified by ESIC from time to time, shall be the Competent Authority to issue the "Ward of Insured Person Certificate".

Petitioner No.2 is the daughter of petitioner No.1, who appeared in 10+2 examination vide Roll No.2722433 and secured 85.6% marks. She appeared in the AIPMT-2015 under Roll No.51102303 on 03.05.2015. The said examination, however, was cancelled by the Apex Court and a re-test was held on 25.07.2015, which has been qualified by petitioner No.2 as per the result declared on 17.08.2015.

Petitioner No.1, mother of petitioner No.2, was employed with respondent No.6-M/s. Simmiz Polychem Industries and was registered vide ESIC Registration Card bearing IP No.1321172261 dated 22.09.2013. Petitioner No.1 made an application on 08.06.2015 to respondent No.3 for issuance of "Wards of Insured Person Certificate" to her daughter for admission under the ESIC Management Quota, which has been rejected by the respondents vide order dated 10.06.2015 on the ground that though petitioner No.1 is alleged to have been in employment since 01.01.2009 but deposited the contribution post dated from January 2009 to September 2013 online and as per the directions issued by the Head Office of the ESIC, the Ward of Insured Person Certificate to apply for the ESIC Management Quota seat cannot be issued. She was again informed vide letter dated 26.08.2014 that her declaration form online was submitted on 22.09.2013 with the date of appointment on 01.01.2009 but the contributions have been

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deposited by the employer for back periods from January 2009 to September 2013 after the date of such registration on 22.09.2013. Therefore, petitioner No.1 was not found eligible for being an employee in continuous insurable employment for the last 5 years. Thus, the petitioners have challenged order dated 10.06.2015 passed by respondent No.3 and communication dated 26.08.2014 by respondent No.4.

It is pertinent to mention that the petitioners had earlier filed CWP No.17621 of 2014 for admission in the year 2014-15 but the said writ petition was dismissed as infructuous because petitioner No.2 had not qualified in the AIPMT-2014, therefore, she was not eligible for admission.

It is alleged that a similarly situated person, namely, Manju Soni filed CWP No.18560 of 2014 titled as "**Manju Soni w/o Sh. Devender Soni and another vs. Union of India and others**", which was decided on 29.09.2014, in which the following order was passed:-

> "4. I am not convinced prima facie that the petitioner has made out a case that she is an insured person. The prima facie observation is on account of the fact that the documents filed by the employer surely contain references to verifications said to have been made by the Provident Fund Officer but it is not possible for me to vouch whether the alleged verification is genuine and whether the rubber stamping is also genuine. These are matters which the authorities can cross check with the public authorities who are reported to have made the verification. There should be also other methods of verification, such as payment of salary if it was being done by cheques of the amounts that were paid or any other status of employment declared by the petitioner to any public authority in the last 4-5 years. The records now brought by the respective parties are hardly sufficient to take a decision on disputed question of fact at this stage.

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> 5. Any decision regarding the issue of whether the petitioner will have benefit of being considered as an insured person for a period of five years would require to be properly examined only by the ESIC itself and they may undertake such an investigation. The petitioner is at liberty to produce such proof and also get the assistance of the employer to offer appropriate proof. This, if the petitioner is successful, will be at least useful in future for admission for her child. As of now, I do not think it is possible to take final decision for the benefit of the petitioner when the last date for consideration falls tomorrow. The petitioner may engage the respondents with such communication and such proof as she is prepared to offer and invite a decision from the ESIC as early as possible. Having regard to the fact that the petitioner's child's admission to the college cannot be considered for the present year, I would leave it to the authorities to take such a decision and the petitioner if she is in any way aggrieved shall resort to an appropriate legal remedy."

It is alleged that petitioner No.1 had attached documents supporting the application for issuance of Wards of Insured Person Certificate, namely, registration in ESIC certificate, RTI report from EPH, muster roll verified, wages statement, application dated 26.08.2014, audit report attested from CA and the already applied letter for the issuance of IP certificate but because of the improvised definition of the 'insured person' in the admission notice for the year 2015-16, the impugned order has been passed.

It is further alleged that in the admission notice dated 13.08.2014 for the academic session 2014-2015, the definition of insured person was only to the extent that *"the insured persons for the purpose of availing benefit of ESIC Management Quota for his/her wards shall be an employee as defined in the ESI Act; and he/she should have been in*

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continuous insurable employment for a minimum period of five years as on 1st January of the year of admission and should have paid at least 78 days of contribution in each Contribution Period during this five year period, whereas in the admission notice for the academic session 2015-16, the following condition has been added:-

> ".....The 5 year period would be counted from the date of entry into the ESI Scheme. For employees who entered the Scheme prior to 9th June, 2011, the date of entry into the Scheme for the purpose of availing benefit of ESIC management quota for his/her wards would be the date of submission of `Declaration Form' by the employer in respect of the employee concerned at the Branch Office or another appropriate office of the ESIC. For employees who entered the Scheme after 9th June, 2011, the date of entry into the Scheme for the above purpose would be the date of registration available in the IP database of the ESIC. In case there is default or delay on the part of the employer in getting itself or the concerned employee covered under the Scheme, the ESIC will not be responsible for the said default or delay. Any period prior to the date of entry described above would not be counted towards the 05 year period of eligibility for the purpose of availing benefit of ESIC Management Quota."

It is also submitted that the contribution has to be paid by the employer for which petitioner no.1 should not be made to suffer if the contribution is not paid in time.

In reply, it is submitted that petitioner No.1 was not eligible for issuance of "Ward of Insured Person Certificate" as she was not fulfilling the criteria approved by the ESIC in its 165th meeting. It is further averred that the ESIC Medical Colleges are set up under an enabling provision, i.e. Section 59(b) of the Act, and the admission to these colleges is governed by

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the duly approved admission policy for Under Graduate (MBBS/BDS) Courses. The revised definition of `Insured Person', prescribed for the purpose of availing benefit of the ESIC Management Quota seat, has been duly approved by the ESIC in its 165th meeting. The ESIC is a body corporate which is the highest decision making body under the Act comprising of representatives of the Central Government, State Governments, employers' representatives, employees' representatives and representation from the medical fraternity and parliamentarians. The five year period in the definition of `Insured Person' has been further specified and clarified in the approved admission policy for UG (MBBS/BDS) courses to maintain objectivity in the issue of Ward of Insured Person Certificate by the field offices of the ESIC and facilitate the eligible insured persons to avail the benefit of preferential admissions to MBBS course for their wards under ESIC Management Quota. It is further averred that as per the instructions issued in the admission notice for the academic session 2015-16, the `insured person' has been defined to be an employee who should have been in continuous insurable employment for a minimum period of five years as on 1st January of the year of admission and should have paid at least 78 days of contribution in each contribution period, during this five year period. The five year period is to be counted from the date of entry into the ESI scheme and for the employees who entered the scheme prior to 9th June, 2011, the date of entry into the scheme for the purpose of availing benefit of ESIC Management Quota for his/her wards would be the date of submission of `Declaration Form' by the employer in

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respect of the employee concerned at the Branch Office or another appropriate office of the ESIC and for the employees who entered the scheme after 9th June, 2011, the date of entry into the scheme for the above purpose would be the date of registration available in the IP database of the ESIC. It is further averred that in case there is default or delay on the part of the employer in getting itself or the concerned employee covered under the scheme, the ESIC will not be responsible for the said default or delay. It is further averred that the petitioner No.1 was registered as an insured person in the web portal of the ESIC on 22.09.2013 and the date of entry into the scheme in respect of the petitioner No.1 would be 22.09.2013 and since she has not completed 5 years of continuous insurable employment from the date of entry into the ESI scheme, she is not entitled to receive the Ward of Insured Person Certificate. It is further averred that there is no record available with the ESIC that petitioner No.1 was in employment of M/s. Simmiz Polychem Industries prior to September, 2013 as even the original record of the employment was perused by the Court in CWP No.18560 of 2014 filed by one Manju Soni, which was allegedly similarly situated with petitioner No.1 insofar as the date of employment, date of registration, date of depositing contribution etc. are concerned. It is further averred that if petitioner No.1 was aware of the regular contributions, allegedly being deducted from her salary towards ESIC contribution, then why she waited for nearly 4 years and 9 months for issuance of Temporary Identification Card as date of her registration is 22.09.2013. It is further averred that the contributions for the period ending March 2009 to

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September 2013 have been deposited only after the date of registration as the said deposits have been made on 30.09.2013, 10.10.2013, 22.10.2013, 24.10.2013 and 25.10.2013, whereas in the manual half yearly returns of contribution submitted by respondent No.6 for the contribution period ending March, 2009, September 2009, March 2010, September 2010 and March 2011, name of the petitioner does not appear, which according to the respondents is cleverly created to show petitioner No.1 to be an employee from back date whereas she has been registered as employee on the online web portal of the ESIC only on 22.09.2013. It is also averred that the online registration of the employees started only in June, 2011 and earlier thereto manual returns of contributions were filed by the employer/respondent no.6, which have been attached as Annexures R-5, in which name of petitioner no.1 does not appear.

In the reply filed by respondent No.6, it is averred that it is in the business of manufacturing of starter switches utilized for submersible pumps. It is averred that petitioner No.1 was working with it since January 2009 along with two other female employees in the packing department but she could not be registered along with other two female employees of the said department because of mistake on the part of the Accounts Manager. It is further averred that the mistake came to light when petitioner No.1 asked for the registration certificate in order to apply for IP certificate in the year 2013. It is further averred that the attendance register of the employees has been duly verified on 09.05.2009 by the Enforcement Officer of the EPFO, Hisar. It is also averred that respondent No.6, on its own, got the record

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inspected by M.K.Garg, SSO, ESIC, Hisar on 24.06.2014 who had imposed a penalty of ₹442/- after finding the discrepancy on the ground of non-payment of contribution in time.

Counsel for the petitioner has argued that the definition of `insured person' appearing in the admission notice for the academic session 2014 could not have been further improvised to the detriment of the interest of the petitioners. It is also submitted that there is no fault on the part of petitioner No.1 if the contribution has not been deposited by her employer in time and was registered on 22.09.2013 on the web portal of the ESIC. It is also submitted that the documents attached with her application dated 08.06.2015 are sufficient to prove that petitioner No.1 was in employment from 01.01.2009 and has also fulfilled the criteria laid down in Clause 8 of the admission notice dated 05.06.2015, defining `insured person'.

On the other hand, counsel for the respondents has submitted that if the contribution is not paid by the employer in time, it cannot be penalized in terms of the provision of the Act but the petitioners cannot take advantage of the situation as the documents on record, submitted by the employer itself as Anexures R-1 to R-5, clearly show that petitioner No.1 was not named as an employee in 2011 and has been registered in the year 2013.

I have heard learned counsel for the parties and examined the available record with their able assistance.

Undisputedly, there are four ESIC Medical Colleges in which there are 162 seats under the ESIC Management Quota, out of which 83

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seats are unreserved. In order to seek admission against the ESIC Management Quota Seat, the Ward of Insured Person Certificate, issued by the concerned Regional Director/SRO, is a *sina qua non.*

The petitioners have no objection to the definition of `insured person' which was there in Clause 8 of the admission notice dated 13.08.2014 for the academic session 2014-15 but they are aggrieved against the alleged improvisation of the definition of `insured person', contained in Clause 8 of the admission notice dated 05.06.2015, which is only clarificatory in nature because in the definition of insured person appeared in Clause 8 of the admission notice dated 13.08.2014, it was provided that the insured person would be an employee as defined in the Act and he/she should have been in continuous insurable employment for a minimum period of five years as on 1st January of the year of admission and should have paid at least 78 days of contribution in each contribution period during this five year period. In addition to this definition, in the admission notice dated 05.06.2015, for the academic session 2015-16, the only explanation has been given as to how the period of five years is to be counted. It is provided that for the employees who have entered the scheme prior to 09.06.2011, the date of entry into the scheme for the purpose of availing benefit of ESIC Management Quota for his/her wards would be the date of submission of `declaration form' by the employer in respect of such employees at the Branch Office of the ESIC and for the employees who have entered after 09.06.2011, the date of entry in the scheme for the above purpose would be the date of registration available in the IP database of the

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ESIC.

The case set up by the petitioners is that petitioner No.1 was employed by respondent No.6 on 01.01.2009 in the packing department but admittedly, she has been got registered vide Registration Card bearing IP No.1321172261 dated 22.09.2013. According to the definition of `insured person' contained in Clause 8 of the admission notice dated 05.06.2015, petitioner No.1 shall have to be considered to have entered the ESI scheme on 22.09.2013, with effect from the date of registration in the IP database of the ESIC, as she had entered it after 09.06.2011. Petitioner No.1 has relied upon the muster roll having been signed by the Enforcement Officer of the EPFO, Hisar and the Income Tax Returns of the employer to prove her employment w.e.f. 01.01.2009 but the said verification was not found *prima facie* to be correct in the another CWP No.18560 of 2014 filed by the allegedly similarly situated employee, namely, Manju Soni, decided on 22.09.2014. Petitioner No.1 has also failed to contradict the documents on record Annexures R-1 to R-5, the contribution returns filed by respondent No.6 in respect of the employer's share, in which the name of the petitioner is conspicuously absent and in order to cover up the said deficiency, respondent No.6 has alleged that it was a mistake on the part of its Accounts Manager.

All these things are questions of fact which require cogent evidence and can only be established in a civil suit in which the issue to be decided would be as to whether petitioner No.1 was an employee of respondent No.6 w.e.f. 01.01.2009 or 22.09.2013?

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Insofar as the improvisation of definition of `insured person', as challenged by the petitioners, is concerned, I am of the considered opinion that in the matter of admission in a medical college on preferential basis in a specific quota, it is for the ESIC to lay down the parameters, which are applicable to all the candidates who aspire for admission in the said colleges and the petitioners cannot be allowed to agitate that the definition of `insured person' has been further improvised over and above the definition which was provided in the admission notice dated 13.08.2014 for the academic session 2014-15.

Thus, in view of the aforesaid facts and circumstances, I do not find any merit in the present writ petition and hence, the same is hereby dismissed.

September 21, 2015 **(Rakesh Kumar Jain)**
vinod* **Judge**